

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 9, 2005

The Honorable Anthony J. Scirica
Chief Judge
United States Court of Appeals for the Third Circuit
22614 U.S. Courthouse, 601 Market St.
Philadelphia, PA 19106

Dear Chief Judge Scirica:

In connection with the nomination of Judge Samuel Alito as an Associate Justice of the Supreme Court, questions have been raised about his participation and decision in your court's Case No. 01-1827, a case in which the named parties included The Vanguard Group, Inc., Vanguard Fiduciary Trust Company, and Vanguard/Morgan Growth Fund, Inc. It would be helpful to us as members of the Senate Judiciary Committee if you could assist us in understanding the issues raised in respect to that case by providing us with the following documents and information:

1. A copy of the unpublished *per curiam* opinion filed July 30, 2002, by Judges Alito, Roth and Fuentes, in its original form, showing the signatures, if any. Please indicate whether the first judge's name listed in the opinion identifies the drafter of the opinion, and whether there are any other records indicating who drafted the opinion.
2. A copy of the "Corporate Disclosure Statement" or similar statement required by Federal Rule of Appellate Procedure 26.1, or any local rule, filed by any of the Vanguard-named parties, and by any other parties which in fact were affiliated with Vanguard, whether or not so named, and a copy of any operating procedure or other record indicating that such statement was distributed to Judge Alito.
3. A copy of each brief filed by any party, each motion filed by the appellant, including the Petition for Rehearing or Rehearing En Banc, each motion or response to a motion, including any response to such Petition, filed by any of the Vanguard appellees, and any order signed or agreed to by Judge Alito disposing of any such motion or petition, all in original form..
4. A copy of appellant's 2003 motion to vacate the judgment and to disqualify Judge Alito, and any responses thereto.
5. Any communication or record of any communication between Judge Alito and you, any other member of the Court, or the Court's staff disclosing or discussing his 1990 commitment to our Committee to "disqualify myself from any cases involving the Vanguard companies." Please indicate whether you or the court were informed of that commitment in any other way.

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6. Any communication or record of any communication from or to the White House, the Justice Department (including the FBI), or Judge Alito, or anyone else on their behalf, in respect to the reasons why Judge Alito failed to recuse himself from Case No. 01-1827, including the recent White House statement regarding a computer failure. Please indicate whether Judge Alito took any part in formulating those communications or the explanations they contained.
7. Any local rule, or other communications from you or the Court, or any Waiver of Disqualification under Canon 3D, purporting to relieve Judge Alito from his commitment respecting the Vanguard Companies or from the requirements of 28 U.S.C. 455(b)(4) and (d)(4) and/or Canons 3 of the Code of Judicial Conduct in case No. 01-1827.
8. Any other documents or information which you believe would assist us in understanding Judge's Alito's failure to recuse at the start of the case or soon thereafter.
9. A description of any systems or checks – whether automated or otherwise – in place in the Third Circuit from the time Judge Alito joined the court until now designed to ensure that judges not be assigned cases that could present conflicts of interest or the appearance of conflict; how each judge submits the names of potential parties that could present such conflicts or the appearance thereof; whether the system or systems have ever malfunctioned or otherwise failed to identify any potential conflicts of interest or the appearance thereof; and what the understanding is as to a judge's obligation if they know of a potential conflict or the appearance thereof that has not been identified by the system or systems.

If you believe there will be any delay or difficulty obtaining any of the requested information or documents, please contact Senior Nominations Counsel, Helaine Greenfeld, at 202-224-7703, so that we can determine if there are other means of getting that information. Please do not send anything by ordinary mail, since such mail is delayed substantially by security measures.

We regret the necessity to trouble you with this request, but under the circumstances, hope you can understand its importance and urgency. Thank you in advance for your cooperation.

Sincerely,

Patrick Leahy

Helaine Greenfeld

Handbook

Dr. J. J. J.

Thurs. 17. 18. 18. 18.

Handbook

Dr. J. J. J.

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